

the decree, had made advances for the support of the husband and wife and paid money in discharge of the debts of the husband, which ought to be reimbursed ; and, that no order ought to be passed for bringing in the money until the husband and wife answered a petition of the trustee for the sale, as to those advances, filed on the day of the hearing. To this the court said:]

The sums thus alleged to have been advanced by the trustee, Gough, nearly absorb the whole trust fund, and not intending, at this time, to pronounce an opinion in reference to them, I cannot well understand how the trustee of this court, who was certainly not required to complicate himself with such transactions, but whose duties were plain and simple, shall be permitted, by passing beyond the line of his duty, to exonerate himself from those obligations which the decree appointing him imposed upon him.

The court is not disposed to look with favor upon the appropriation by its trustee, of the proceeds of sales of property made under its decrees, without its previous authority, and such appropriations have been condemned upon former occasions. *Mac-kubin vs. Brown*, 1 *Bland*, 410 ; *Iglehart vs. Armiger*, *ib.*, 519.

And, more especially, will such conduct be viewed with jealousy, when married women and children are concerned, and the property or fund raised by the sale, is subject to marriage settlements, designed for the support of families. Payments made under such circumstances, cannot be offered as an excuse for not doing that which the decree plainly directed to be done. But, it is said, that Costigan was, under the marriage settlement, entitled to the usufruct of this property for life ; and, therefore, to that extent, the appropriation was strictly within the terms of the trust. Conceding that Costigan was so entitled, it by no means follows, that the trustee, Gough, was justifiable in making the applications. He was not the trustee of Costigan and wife, but the trustee of this court, authorized to sell the property and bring the avails in, to be disposed of under the direction of the Chancellor ; and it would be strange if he could rid himself of this duty, by assuming a character to which he